CF0000067389

(2)

CRA 1405/2000

XII-189(Jail)C.J.P.R./9-94

Division Bench (Criminal)

APPEAL OF PRISONER

No. ST NO. 51/2000 Name - हरसराम s/o कोन्दा

Father's name - मोंद

Residence - 352 जूपट Age - 55 वर्ष

Sentenced to - आजीवन कारावास on - 15-4-2000

Under Section - जुर्माना 100 रु. या 3 माह by प्रथम अपर सत्र न्यायाधीश बिलासपुर (म.प्र.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement संलग्न निर्णय प्रतिलिपि
2. Date on which copy received- - - 12-5-2000
3. Date on which Appeal sent- - - - 13-5-2000
4. Whether the prisoner wishes to be represented or not- नहीं

No. ST NO. 51/2000 Name हरसराम s/o कोन्दा उ० मोंद

Confined in - के-वीर Jail- बिलासपुर - म.प्र.

No. - - - - 464 - - Dated - 13-5-2000 199

Forwarded to the श्री मान रजि० महोद मान० कु० सहायक सत्र बिलासपुर/

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

अधीक्षक,
केन्द्रीय जेल बिलासपुर
Jail

जेल कर्मचारी,
केन्द्रीय-जेल, बिलासपुर

Date of receipt in ---------- Office ----------

Date of receipt of record to accompany the - - - - - - - - - - - -

Memo of Appeal to the Appellate Court- - - - - - - - - - - - - -

No. - - - - - - - - - - Date 199

Forwarded to the :-

High Court of Madhya Pradesh
JABALPUR.

Date of receipt in Appellate Court 23 MAY 2000

Reg. No. 92

Receipt Clerk
High Court, Jabalpur

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.1405/सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

28-2-2007

Mr. Abhay Tiwari, counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais.*

L.C. Bhadoo, J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 15th April, 2000 passed by the 1st Additional Sessions Judge, Bilaspur, in Sessions Trial No.51/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for three months.

Case of the prosecution, in brief, is that in the intervening night of 18th & 19th November, 1999, the accused/appellant along with his wife Rajkunwar (since deceased) and children were sleeping in a room. In the night, some quarrel started between the husband and wife. At about 5 a.m. in the wee hours of 19-11-1999 the accused attacked deceased Rajkunwar with carpenter axe on her head & neck which was witnessed by son Saukai and daughter Brihaspati Bai. Thereafter, the accused ran away. The matter

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was reported by Saukai, son of the appellant, on 19-11-1999 at Police Station: Masturi vide Merg intimation Ex.P-10, based on that Dehati Merg intimation Ex.P-11 was registered and consequently, first information report Ex.P-18 for the commission of offence under Section 302 of the I.P.C. was registered against the accused/appellant. The Investigating Officer left for the scene of occurrence and after giving notice Ex.P-1 to the Panchas, he prepared the inquest Ex.P-2 on the body of Rajkunwar. While in police custody, the accused gave memorandum Ex.P-3 regarding carpenter axe, the weapon of offence, and in pursuance of that, he got recovered the carpenter axe under Ex.P-4. Plain soil and blood stained soil were seized under Ex.P-5. The body of Rajkunwar was sent for post-mortem examination to Community Health Centre, Masturi under Ex.P-6 where Dr. M.K. Rai (PW-2) conducted post-mortem and prepared the post-mortem report Ex.P-7 in which he opined that cause of death was cut of vital organs of neck and excessive haemorrhage, trachea, carotid vessels, muscles, oesophagus, 4th cervical vertebra column. The death was homicidal in nature. Site plan Ex.P-12 was prepared by the Patwari.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned 1st Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined nine witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused denied the material

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appearing against him in the prosecution evidence and stated that he has been implicated in a false case, he is innocent.

Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Mr. Abhay Tiwari, learned counsel for the appellant and Mr. Ashish Shukla, learned Additional Public Prosecutor on behalf of the State/respondent.

Mr. Abhay Tiwari has not disputed the homicidal death of Rajkunwar. Moreover, Saukai (PW-3), son of the accused & the deceased, and Kum. Brihaspati (PW-4), daughter of the accused & the deceased, have stated that on the fateful night they were sleeping in the same room where the accused & the deceased were sleeping and they saw the accused attacking the deceased with carpenter axe. Apart from that, Dr. M.K. Rai (PW-2) who conducted post-mortem on the body of Rajkunwar has stated that there were three injuries on neck & mandible bone, vital organs i.e. trachea, carotid vessels, muscles, oesophagus, 4th cervical vertebra column were cut, as also on account of excessive haemorrhage, Rajkunwar died and the death was homicidal in nature. Therefore, it is established that the death of Rajkunwar was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel for the appellant argued that even though Saukai (PW-3) & Kum. Brihaspati (PW-4), son & daughter of the accused and the deceased, respectively, have deposed against the accused

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that the accused attacked the deceased with carpenter axe, but there was a dispute between the deceased and the accused on the one hand, son Bhokai on the other hand with respect to the partition of the land. The deceased and the accused were not interested in partition of land and giving share to Bhokai, therefore, Bhokai has committed the murder of Rajkunwar and the accused has been falsely implicated in the crime.

On the other hand, Mr. Ashish Shukla, learned Additional Public Prosecutor supported the judgment of the trial Court.

Saukai (PW-3), son of the accused, has stated in his evidence that in the fateful night, he along with his father, mother, brother Sadhu, sister Pardeshnin & Brihaspati were sleeping in a room, at about 5 a.m. he woke up and saw that the accused was attacking his mother with carpenter axe. Thereafter, his sister Brihaspati also woke up and she also saw her mother sustained injury on neck. He tried to intervene, but his father did not stop and committed the murder of his mother. Thereafter, he informed his uncle Sukhchand and lodged the Merg intimation (Ex.P-10) and Dehati Merg intimation (Ex.P-11) in Police Station: Masturi based on which the first information report (Ex.P-18) was registered. The above evidence has been corroborated by Kum. Brihaspati (PW-4), sister of Saukai (PW-3) who was also sleeping in the room. Their evidence has been corroborated by Sukhchand (PW-5), who has stated in his evidence that Saukai (PW-3) came to him and informed that his father has committed the murder of his mother. Thereafter, he went to village Kotwar Mohanlal and they went to Police Chowki Malhar. In cross-examination of Saukai (PW-3), defence has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

tried to establish that there was a dispute regarding partition of land between the accused & the deceased on the one hand and their son Bhokai on the other hand. In cross-examination, this witness has stated that Bhokai was not present at the house in the fateful night, it is also correct that he did not participated in the last rites ceremony of his mother. Saukai (PW-3) has further stated that it is incorrect to say that Bhokai asked him how to depose against the accused in the Court. He has also stated that Bhokai was sleeping in the house in the fateful night. He has also denied that on account of land dispute Bhokai has committed the murder of his mother.

Therefore, there is no substance in the argument of learned counsel for the appellant that in fact Bhokai committed the murder of his mother on account of land dispute. The evidence of Saukai (PW-3) & Kum. Brihaspati (PW-4), who are none else than son & daughter of the deceased respectively, is consistent and there is no infirmity in the judgment of the trial Court. There is no reason as to why they will unnecessarily implicate their own father in such a heinous crime of the murder of their own mother. Their ocular evidence has been corroborated in material particulars by the medical evidence of Dr. M.K. Rai (PW-2), who conducted post-mortem on the body of Rajkunwar. He has categorically stated in his evidence that he conducted post-mortem on the body of Rajkunwar on 19-11-1999 and noticed following injuries: -

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1. incised wound on neck in the size of 6" x 3 ½" x 2 ½", on account of which vital organs skin, trachea, food pipe, blood vessels, 4th cervical vertebra, thyroid gland and thyroid cartilage were cut;
2. incised wound on left frontal part of head in the size of 3" x 2" x 2" as a result of which skull bone was fractured and brain was damaged; and
3. incised wound on left side of mandible bone in the size of 3" x 2" x 2", as a result of which the mandible bone was cut.

Therefare, the above evidence of the doctor corroborates the evidence of eyewitness Saukai (PW-3).

In the circumstances, we do not find any illegality or infirmity in the finding of the trial Court convicting and sentencing the accused/appellant for attacking his wife with carpenter axe. Moreover, the said carpenter axe was recovered at the instance of the accused and the same was found stained with blood, as per the Forensic Science Laboratory report Ex.P-21.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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29/10/12